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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004518-3398-01]

RIN 0648-BC66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Amendment 37

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures for gray triggerfish described in Amendment 37 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs) for gray triggerfish; revises the recreational accountability measures (AMs) for gray triggerfish; revises the gray triggerfish recreational bag limit; establishes a commercial trip limit for gray triggerfish; and establishes a fixed closed season for the gray triggerfish commercial and recreational sectors. Additionally, Amendment 37 modifies the

gray triggerfish rebuilding plan. The purpose of Amendment 37 and this final rule is to end overfishing of gray triggerfish and help achieve optimum yield (OY) for the gray triggerfish resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER] except for the amendments to §§ 622.39(a)(1)(vi) and 622.41(b) which are effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Amendment 37, which includes an environmental assessment, a regulatory flexibility act analysis (RFAA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at

<http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727-824-5305, e-mail rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. All gray triggerfish weights discussed in this rule are in round weight.

On January 25, 2013, NMFS published a notice of availability

for Amendment 37 and requested public comment (78 FR 5404). On February 13, 2013, NMFS published a proposed rule for Amendment 37 and requested public comment (78 FR 10122). The proposed rule and Amendment 37 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

ACLs and ACTs

This rule revises the ACLs for the gray triggerfish commercial and recreational sectors. This rule also revises the ACTs for both sectors. The commercial ACT is expressed as a quota in the regulatory text.

The Council's Scientific and Statistical Committee (SSC) recommended that the gray triggerfish acceptable biological catch (ABC) be reduced to 305,300 lb (138,346 kg) from the current gray triggerfish ABC of 595,000 lb (269,887 kg). In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC (73 FR 38139, July 3, 2008), and set the ABC equal to the ACL. Applying those sector allocations to the revised ACL of 305,300 lb (138,346 kg) results in a reduced commercial ACL of 64,100 lb (29,075 kg), and a reduced recreational ACL of 241,200 lb (109,406 kg).

The Generic Annual Catch Limit Amendment developed by the Council and implemented by NMFS (76 FR 82044, December 29, 2011) established a standardized procedure to set sector-specific ACTs based on the ACLs. This procedure evaluates components that were selected to represent proxies for various sources of management uncertainty and uses a formula to determine the appropriate buffer between the ACL and ACT. The Council used this procedure for Amendment 37, which resulted in a 5 percent buffer between the commercial ACL and ACT, and a 10 percent buffer between the recreational ACL and ACT. Therefore, this final rule sets the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), and the recreational ACT at 217,100 lb (98,475 kg). The ACLs and ACTs in this rule are the same as those implemented through the temporary rule for gray triggerfish (77 FR 28308, May 14, 2012, and extended in 77 FR 67303, November 9, 2012), which remains in effect until the effective date of this final rule because this final rule replaces the measures implemented in the temporary rule.

AMs

For the commercial sector, the FMP contains both in-season and post-season AMs. The in-season AM closes the commercial sector when the commercial ACT (commercial quota) is reached or projected to be reached. Additionally, if the commercial ACL is

exceeded despite the quota closure, the post-season AM reduces the following year's commercial ACT (commercial quota) by the amount of the prior-year's commercial ACL overage.

Prior to the promulgation of the temporary rule, the FMP contained no in-season AM for the recreational sector, but only a post-season AM. The recreational post-season AM provides that if the recreational ACL is exceeded, NMFS will reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not exceed the recreational ACT during the following year. The temporary rule established an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached.

Consistent with the temporary rule, this final rule replaces the current post-season AM with an in-season AM for the recreational sector, and will close that sector when its ACT is reached or projected to be reached.

This rule also adds a post-season AM in the form of an overage adjustment that would apply if the recreational ACL is exceeded and gray triggerfish are overfished. This post-season AM would reduce the recreational ACL and ACT for the following year by the amount of the ACL overage in the prior fishing year,

unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

Commercial Trip Limit

There is currently no trip limit for the commercial sector. This rule establishes a commercial trip limit for gray triggerfish of 12 fish. The trip limit applies until the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

Seasonal Closure of the Commercial and Recreational Sectors

This final rule establishes a seasonal closure of the gray triggerfish commercial and recreational sectors in the Gulf from June through July, each year. This fixed seasonal closure assists the rebuilding of the gray triggerfish stock by prohibiting harvest during the gray triggerfish peak spawning season. Additionally, June and July are the months that have the highest percentage of recreational landings.

Recreational Bag Limit

Gray triggerfish currently have a recreational bag limit that is part of the 20-fish aggregate reef fish bag limit. However, the aggregate recreational bag limit has no specific limit for recreational gray triggerfish landings, meaning all 20 fish harvested under the bag limit could be gray triggerfish.

This final rule establishes a 2-fish gray triggerfish recreational bag limit within the 20-fish aggregate reef fish bag limit. This bag limit would apply until the recreational ACT is reached or projected to be reached during a fishing year and the recreational sector is closed.

Other Action Contained in Amendment 37

Amendment 37 revises the rebuilding plan for gray triggerfish by modifying the mortality rate and resulting time period to rebuild the gray triggerfish stock. The gray triggerfish stock is currently in the 5th year of a rebuilding plan that began in 2008. Amendment 37 modifies the rebuilding plan in response to the results from the 2011 Southeast Data, Assessment, and Review (SEDAR) stock assessment and the subsequent review and recommendations by the SSC for the gray triggerfish ABC. The modified rebuilding plan is based on a constant fishing mortality rate that does not exceed the fishing mortality rate at OY and will rebuild the stock by the end of 2017.

Comments and Responses

NMFS received nine comment letters from individuals, two submissions from non-governmental organizations, and two submissions from Federal agencies on Amendment 37 and the proposed rule. The Federal agencies indicated they had no

objection to Amendment 37 or the proposed rule. Specific comments related to the actions contained in Amendment 37 and the proposed rule are summarized and responded to below.

Comment 1: The proposed combination of commercial management measures in Amendment 37 (June through July seasonal closure and a 12-fish commercial trip limit), are not projected to constrain harvest below the commercial ACT and ACL, meaning an in-season closure will likely be necessary. A far more effective approach would be a combination of options that result in projected landings that stay below the ACT and certainly below the ACL. This would result in more predictability for commercial fishermen and reduce the risk of exceeding the ACL and compromising the rebuilding schedule.

Response: NMFS has determined that the full combination of management measures selected by the Council adequately reduces the risk of exceeding the ACL and will ensure that the rebuilding plans remains on schedule. Although the seasonal closure and trip limit, standing alone, are not projected to constrain harvest below the commercial ACT and ACL, there is an in-season AM that closes the commercial sector when it reaches or is projected to reach the ACT and there is a 5 percent buffer between the commercial ACL and ACT. This buffer addresses the uncertainty in projecting when the ACT will be reached and

reduces the risk of exceeding the commercial ACL.

NMFS also determined that the Council sufficiently considered the predictability for commercial fishermen in selecting seasonal closure and trip limit. The Council reviewed 16 combinations of trips limits and seasonal closures and determined that the preferred alternatives best addressed the needs of fishermen while ensuring that the grey trigger stock continues to rebuild as scheduled. Although the projections indicate that an in-season closure will be necessary, this closure would occur in the fall, which is near the end of the fishing year.

Comment 2: The proposed recreational management measures in Amendment 37 (June through July seasonal closure and a 2-fish bag limit) result in projected recreational landings that remain below the recreational ACT, which is highly desirable because in-season recreational landings data are not as timely and accurate as commercial data, making in-season closures a less effective management tool for the recreational sector than for the commercial sector. However, a concern remains because the underlying analysis is based on an assumption that fishermen comply with the 14-inch (35.6-cm), fork length (FL), minimum size limit. In 2011, the SEDAR 9 update assessment analysis indicated that a significant portion of recreational landings were smaller

than the 14-inch (35.6-cm), FL, minimum size limit over the last 3 years. Non-compliance with the minimum size limit may cause the actual reduction in landings to be less than the SEDAR model predictions, resulting in recreational landings that may exceed the ACT and ACL. The Council and NMFS should conduct outreach and education to improve compliance with the minimum size limit. However, in the meantime, NMFS and the Council should consider the proportion of undersized fish landed to avoid exceeding the gray triggerfish ACL.

Response: NMFS recognizes that prior analysis indicated that fishers are landing gray triggerfish that are smaller than the 14-inch (35.6-cm) minimum size limit and that this may cause the actual reduction in landings to be less than the SEDAR model predictions. However, in addition to the seasonal closure and bag limit, this rule will modify the recreational AMS to allow for an in-season closure if necessary. In-season recreational landings are monitored through the Marine Recreational Information Program, which incorporates information on all sizes of fish landed. Further, the closure authority is based on the recreational ACT and there is a 10 percent buffer between the ACL and ACT. This buffer addresses uncertainty in the recreational landings data that may make it more difficult to accurately project when the recreational ACT will be met and helps ensure

that the recreational ACL will not be exceeded.

With regard to outreach and education to improve compliance with the minimum size limit, that confusion may exist among Gulf fishers measuring gray triggerfish because of inconsistencies between state and Federal size limits. In August of 2012, NMFS and the Council developed a guidance document to provide further clarification in identifying and measuring gray triggerfish. The document was sent to all Gulf States and is also listed on the Southeast Regional Office Web site at:

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/ref_fish/2013/am37/documents/pdfs/gray_triggerfish_outreach.pdf.

The document includes the proper method of identifying and measuring gray triggerfish, and explains why compliance with the size limits is important.

Comment 3: Because of the urgent need to reduce gray triggerfish catch levels in order to get the rebuilding plan on track, NMFS should approve and implement Amendment 37. However, NMFS should also immediately instruct the Council that some level of discard mortality should be factored into both the catch setting and catch monitoring process for gray triggerfish.

Response: NMFS disagrees that the Council needs to factor in some level of discard mortality in the catch setting and catch monitoring process for gray triggerfish. The NMFS decision tool

included a discard mortality of zero percent for Amendment 37 because, unlike many other reef fish species the Council manages, gray triggerfish are considered less susceptible to discard mortality. Previous assessments of gray triggerfish, including SEDAR 9, determined that the discard mortality rate was minimal (one to two percent) and that using this rate made little difference in the model outputs. Thus, these assessments used a zero-percent discard mortality rate when calculating stock status. For consistency, the SSC also modeled discard mortality at zero percent. However, to account for scientific uncertainty in the model, the SSC determined that a buffer should be included when setting gray triggerfish catch limits and thus, set the ABC at 305,300 lb (269,887 kg), which is 25 percent below the overfishing limit of 401,600 lb (182,163 kg) recommended by the SEDAR 9 update assessment.

Changes from the Proposed Rule

On April 17, 2013, NMFS published in the Federal Register an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the

regulatory text; it does not change the specific regulatory requirements that were contained in the proposed rule. Therefore, as a result of this reorganization, the gray triggerfish commercial quota regulatory text previously located at § 622.42(a)(1)(vi) is now at § 622.39(a)(1)(vi), the seasonal closure text located at § 622.34(w) is now at § 622.34(f), the commercial trip limit text located at § 622.44(g) is now at § 622.43(b), the recreational bag limit text located at § 622.39(b)(1)(v) is now at § 622.38(b)(5), and the ACL/ACT/AM text located at § 622.49(a)(2) is now at § 622.41(b).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 37 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this

determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

The AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the revised commercial and recreational ACLs and ACTs and the recreational sector AMS for gray triggerfish contained in this final rule at §§ 622.39(a)(1)(vi) and 622.41(b). The rest of the management measures contained in this final rule will be effective 30 days after publication in the Federal Register. Allowing for a 30-day delay in effectiveness of the gray triggerfish ACLs, ACTs, and recreational sector AMS would be contrary to the public interest because delaying their implementation would likely allow overfishing of gray triggerfish, resulting in more severe reductions in gray triggerfish catch levels in the future, which could have higher socioeconomic impacts on gulf reef fish fishers. A temporary rule published on May 14, 2012 (77 FR 28308) and extended on November 9, 2012 (77 FR 67303) implemented these same reduced ACLs and ACTs, and similar recreational AMS in order to end overfishing of gray triggerfish and rebuild the stock, and this final rule replaces those interim measures

currently in effect. Any delay in implementing these reduced catch limits would undermine the intent of this rule, Amendment 37, and the interim measures currently in effect.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 3, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.34, paragraph (f) is added to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(f) Seasonal closure of the commercial and recreational sectors for gray triggerfish. The commercial and recreational sectors for gray triggerfish in or from the Gulf EEZ are closed from June 1 through July 31, each year. During the closure, all harvest or possession in or from the Gulf EEZ of gray triggerfish is prohibited and the sale and purchase of gray triggerfish taken from the Gulf EEZ is prohibited.

3. In § 622.38, paragraph (b) (5) is revised to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(5) Gulf reef fish, combined, excluding those specified in paragraphs (b) (1) through (b) (4) and paragraphs (b) (6) through (b) (7) of this section--20. In addition, within the 20-fish aggregate reef fish bag limit, no more than two fish may be gray triggerfish.

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4. In § 622.39, paragraph (a)(1)(vi) is revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(vi) Gray triggerfish--60,900 lb (27,624 kg), round weight.

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5. In § 622.41, paragraph (b) is revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(b) Gray triggerfish--(1) Commercial sector. If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL and ACT (commercial quota) for that following

year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(2) Recreational sector. (i) Without regard to overfished status, if gray triggerfish recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACT specified in paragraph (b)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gray triggerfish in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, i.e. in state or Federal waters.

(ii) In addition to the measures specified in paragraphs (b)(2)(i) of this section, if gray triggerfish recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (b)(2)(iii) of this section, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and

the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

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6. In § 622.43, paragraph (b) is added to read as follows:
§ 622.43 Commercial trip limits.

* * * * *

(b) Gray triggerfish. Until the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi) is reached--12 fish. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial ACT (commercial quota) is reached.

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